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IN THE HIGH COURT OF JUDICATURE CHHATISGARH AT BILASPUR.

W.P. NO: 149 /2001

PETITIONER: M.M.P. Pandey, aged about 54 years, S/o Shri N. Pandey, Senior Asstt. Grade-II (P) in National Mineral Development Corporation Ltd. Bailadila Iron Ore Project Kirandul (Baster).

V/s

RESPONDENTS: 1. National Mineral Development Corporation Ltd. through its Chairman-Cum-Managing Director Bailadila Iron Ore Project Kirandul (Baster) C.G.

2. Executive Director, National Mineral Development ~~Mineral~~ Corporation Ltd. Bailadila Iron Ore Project Kirandul (Baster).

P.R. No. 170
Presented by Shri
dated 5.2.

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA:

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO. 149 / 2001

Petitioner : M.P.Pandey

Versus

Respondents : National Mineral Development Corporation and anor.

JUDGMENT

(25.8.2001) .

In this writ petition under Article 226 of the Constitution of India the writ petitioner is seeking a direction for quashing the order of termination annexure P- 17 dated 16.1.2001 and further to direct the respondents to pay his arrear, salary and allowances and such other benefits treating him to be in continuous service. At the time of issuance of the said notice the impugned order of termination the writ petitioner was serving as Senior Assistant Grade II (P) in the National Mineral Development Corporation Ltd, Bailadila Iron Oar Project Kirandul ,district Bastar.

2, In order to come to a reasonable conclusion it is necessary that, relevant facts ~~pretty~~ of the case leading to issuance of termination order are briefly stated

3. The petitioner was appointed as L.D.Clerk on 13.10.1970,hence at the time of termination

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of his services in January 2001 the petitioner had put in more than 30 years of service. The petitioner is Secretary of a Registered Consumer Society registered as " Jai Prakash Memorial Centre". It is a Society registered under the provisions of Societies Registrikaran Adhiniyam 1973. A certificate of registration vide annexure P-1 has been filed with this petition. It is averred that the said society has been recognised by the Central Government and the same has been registered as an association by the State Government Consumer Association. A certificate of recognition issued by the Government of India is at annexure P-2. It is also contended by the petitioner that the said society has received several recognition certificates from the State government. It is also further contended that this association received first prize from the Government of M.P. for the out-standing work done in the consumer protection for the years, 1996,1997 and 1998. The Society is also a member of the Central Consumer Protection Council and as such it is entitled to receive sample under the provisions of Food Adulteration Act and prosecute the offenders under the provisions of that Act and also under the provisions of Cosmetic Act & Essential Commodities Act etc. The petitioner himself is the member of State Level Steering Committee of Consumer Welfare Fund and Advisory Committee.

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4. In para 5.2 it is averred that news item was published on 13.3.99 in a local daily Nav Bharat newspaper as regards the dumping of slime and iron ore in river Indrawati. Petitioner submitted a copy of said newspaper item to the Secretary, M.P. Pollution Control Board on 15.3.99 and the said letter has been annexed to the petition as annexure P-5 and a request was made that necessary action be taken. Another letter was also addressed to the Minister for Housing and Enviornment on 4.1.99 regarding the news aforesaid and request was made that immediate action be taken in the matter. It is now contended that this action of the writ petitioner in forwarding the photo-copy of the news-paper which published the aforesaid news annoyed the competent authority and as such an inquiry was initiated against the writ petitioner by issuing a charge-sheet contained in memo dated 30.9.99. Three charges were brought against the writ petitioner. Charge No.1 states that petitioner caused dis-repute to the management of N.M.D.C Ltd Bailadila, Iron Ore Project by forwarding the xerox copy of newspaper cutting published in Daily Nav Bharat news-paper ,Raipur dt. 13.3.2001 under the guise of Secretary, Jai Prakash Memorial Centre to Member Secretary, M.P.Pollution control Board. It is also further stated in the first charge that the petitione also addressed another letter to the Hon.Minister for Housing and Enviornment on 4.1.99 about the pollution of Shankini Dankni river due to alleged slime contained water from the land of Bailadila

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Iron ore project. According to the authority, in view of above, the petitioner had violated the service condition and such violation would amount to major mis-conduct under clause 28 (2) (XX) and 28 (2) (XXI) of the Certified Standing orders applicable to all workman of all projects and feasibility of NMDC Ltd. The aforesaid certified Standing orders vide 28 (2) (XX) reads as under :-

> "Unauthorised communications of official documents or information and disclosure to any unauthorised person of information relating to the management(s business."

Certified standing order 28 (2) (xx) is as under :-

> " Writing with or without signatures,allegations devoid of basis against any workman or Management or writing oflannonymous or pseudonymous letters criticising superiors in the service of the Managements or spreading of false rumour or giving of false information which tends to bring into disrepute the Management or its workman or spreading panic among them."

5. Charge no.2 states that the petitioner used the quarter allotted to him for accommodating the office of Jai Prakash Memorial Centre Bastar Division, unauthorisedly. This is said to be dis-honesty in connection with management's property which is a major mis-conduct within the meaning of clause 28 (2) (iii) of the Certified Standing Order. The said certified standing order reads as under :-

> " Theft, Fraud or Dishonesty in connection with Management's business or Property."

6. Charge No.3 states that petitioner while functioning as Senior Assisgant Grade - III

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had made correspondence directly with M.P. Pollution Control Board and the Hon'ble Minister for Housing and Enviornment on matters pertaining to the business of the employer and this caused embrassment to his employer organisation and hence the petitioner violated the discipline set by the Corporation. It is further contended that the petitioner used the Corporation quarter allotted to him to be his residence for the purpose of office of Jai Prakash Memorial Centre and it has been turned as anti discipline as per the rules set under House allotment rules. Specifically offence under clause 28 (2) (XXV) of the certified standing order is said to have been committed. The said order reads as under :-

" An Act subversive of discipline."

7. On receipt of articles of charges the writ petitioner submitted his reply vide annexure P-8 dated 4.10.99. Among other things it was contended by the writ petitioner that he had simply forwarded the news-paper cutting in the capacity of Secretary of the society and in doing so he could not be said to have committed any misconduct as there is no bar to participate in such matters as the office bearer of the society in asmuchas such participation is permissible vide memo dated 30.9.99 issued by the Senior Manager.

8. Thereafter by order dated 21.11.99 inquiry officer was appointed. An objection was taken by

the petitioner that Senior Manager has no power and authority to inquire into the matter. By order dated 11.12.99 inquiry officer was appointed and the inquiry was ordered to be completed within three months. The petitioner consistently denied that he has committed any mis-conduct. It was also further stated by him that there was no office of the society in the house occupied by him. It was contended that even otherwise in terms of the allotment rules 1981 no mis-conduct can be said to have been committed by the writ petitioner in the present case. After the inquiry was completed, the petitioner was found to be guilty and the proposal for dismissal was made and the petitioner was directed to show cause against the proposed order of dismissal. The petitioner gave his reply to the show-cause notice vide annexure P-16 contending among other things that the findings of the inquiry officer are perverse in as-much-as as per certified standing order no charge of mis-conduct can be said to have been committed in the circumstances of the case and that the entire inquiry is vitiated and in fact no departmental inquiry could have been brought against the petitioner in the present case. Thereafter, the respondent no.2 passed the impugned order of removal on 16.1.2001. Hence this petition.

9. I have heard Shri Gangele, learned counsel for the petitioner as well as Mr. P.S.Koshi learned

counsel for the respondents. It has been contended by Mr.Gangele that the entire inquiry was concluded on the basis of documentary evidence and no witness as such was examined in the present proceedings. Mr.Gangele has referred me to the impugned order dt. 16.1.2001 para 10.3 (i) which reads as under :-

> " The proceedings reveal that there was intention to produce any prosecution witness other than documentary evidence,as evident from Annexure-III to the charge sheet dated 30.9.99. If for proving the charge,no witness was considered necessary by the Presiding Officer,then non-production of any witness does not constitute any infirmity of the enquiry proceedings."

Though, Mr. Koshi has urged certain preliminary points, I have heard parties on merits at a great length. Drawing my attention to the articles of charges Mr.Gangele submits that on the face of this charge no case can be said to have been made out against the petitioner in asmuch as ,the only document in question relied upon by the competent authority in the present case is in fact a newspaper cutting/clipping. It is therefore,contended by Mr.Gangele that this document is not the official document of the company. Therefore,nothing relating to the official business of the corporation was communicated to any person a un-authorisedly. According to Mr. Gangele the sole basis for initiating inquiry against the writ petitioner is the fact that the writ petitioner had forwarded the copy of the said newspaper cutting in which certain

matter concerning the pollution of some rivers was published.

10. In the return filed on behalf of respondents 1 and 2 certain preliminary objections have been taken. One such objection is that there is a provision for appeal and the said forum has not been exhausted by the writ petitioner before he approaches this Hon. Court. According to Mr. P.S.Koshi learned counsel for the respondents , the writ petition is premature in-asmuch as there is no final order passed by any appellate authority who is Chairman cum Managing Director, It is also contended that the present matter must first come within the purview of section 33 (2) (B)of the Industrial Disputes Act 1947. In IA No.451/200 the respondents have contended that there are certain industrial disputes raised by the writ petitioner in his personal capacity and such issues are pending befor the Central government Industrial Tribunal/ Labour Court. According to the counsel for the respondents even on this score alone the writ petition should be dismissed. It is also further submitted that in terms of section 11-A of the Industrial Disputes Act there is an alternative and efficacious remedy hence the petition should be dismissed.

11. As I have stated above this court has already examined all the aspects of the merits of the present matter. Apart from that it appears that certain other things which are said to be pending in respect of the same writ petition should not stand in the way of disposal of the present petition. On careful

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perusal of the pleadings of the parties it can not be said that the issues raised in this writ petition are sub judice before any competent Court / forum. In other words the fact that the Union has raised two industrial disputes before the Central Government Industrial Tribunal and the same are pending, will not stand in the way of disposal of this writ petition which in substance has to do specifically with the order of termination of services of the writ petitioner.

12. As regards the allegation that the petitioner was illegally using the room of the quarter allotted to him as the office of Jai Prakash Memorial centre, it appears that request was made to the Competent Authority sometime in 1986, however, the competent authority seems to have expressed regrets for not being able to allot the land where a building to house the Jai Prakash Memorial Centre could have been erected. This is reflected in a letter dt. 10.6.86 addressed to the Secretary of the Association by Personnel Officer of the Company. Even assuming that no official transaction should be allowed to be carried-on in the quarter allotted to the writ petitioner, it appears to me that if any action is called for, notice ought to have been issued to the writ petitioner in accordance with rules or regulations prescribed in this behalf. I may also state that even assuming that some files pertaining to the association were kept by the petitioner as an office bearer of the said association and that certain correspondences were carried-on between the petitioner as

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an officer of the association and other agencies, Such activities would not in any way amount to mis-conduct within the meaning of clause 28 (2) (III) of the Certified Standing Orders applicable to workmen of all the projects and feasibilities of NMDC Ltd. In my view by no stretch of imagination, can the writ petitioner be said to have committed in such a situation, theft, fraud or dis-honesty in connection with management's business or property. If at all the writ petitioner was indeed carrying-on the work of the association as an office bearer of the said association and that such activity which was carried-on in the quarter allotted to him by the Company was in any way detrimental to the work of the management, the Company could have simply asked the petitioner to stop such activity and in the event of dis-obedience necessary action could have been initiated by giving a notice to him. The mere fact that some files were kept in the house of the writ petitioner pertaining to the association of which he himself is an office bearer and that certain correspondences were carried-on between the association and the out-side agency, should not be taken to be such a serious matter which called for such a drastic action culminating in dis-missal / removal of the writ petitioner from service.

13. I have carefully perused the averments made in the pleadings of the parties. I have also heard counsel representing the parties at length. In my view what provoked the authority to initiate action against the writ petitioner in sum and substance

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appears to be because he had forwarded a news-paper item to the State authorities for necessary action concerning the pollution caused to the rivers as a result of excavation activity of Iron Ore of Bailadila. I may state here that the association is within its right to high-light any activity which causes pollution which is detrimental to the local population of that area. In fact, the very purpose of having such an association is to carry on activity of creating awareness and to espouse the cause of better enviornment not only in that area but in the entire country and for that matter in the entire world. In fact, I am rather surprised that inspite of information given to the State authority regarding pollution in the said area, State authority has not taken any positive action till date. This is most unfortunate. As a matter of fact, it is the duty of the State Government in the welfare State like ours to take all possible action to prevent pollution which causes health hazards to the inhabitants of that area.

14. I have given anxious consideration to the submissions made on behalf of the parties. I have no doubt in my mind that cause of preventing pollution has been espoused by the association. The petitioner is simply an officer of the said association. Unfortunately the whole brunt of the wrath of the company has fallen on this man, namely, the petitioner. In the entire situation it can not be said that it is a personal action of the writ petitioner in as much as it is the cause which is dear to the association that is sought to be advanced by bringing the news item of pollution to the competent State authorities. If

that be so why one man should be made to suffer? To put it differently, it is not the cause of the person but the cause which is espoused in the present case is by a duly registestered association. Hence an individual can not be singled-out for undue punishment.

15. After taking into consideration all the facts and circumstances of the present case, I hold that the proceedings that have been initiated against the writ petitioner are wholly unjustifiable in as much as in my view no action can be taken against a particular person in the facts and circumstances of the present case as the cause espoused by the association is in public interest. Hence submission that there is effective and efficacious remedy available would not operate in the present case as a bar for this court to exercise jurisdiction under Article 226 of the Constitution.

16. It must be borne in mind that petitioner has already put in more than 30 years of service. At the end of his service career the writ petitioner has not been dealt-with fairly. In my view the circumstances of the present case would not warrant any punishment, let alone removal from service.

17. In the result, in the premises aforesaid, this petition is allowed. The impugned order of removal issued by the executive Director dt. 16.1.2001 is quashed. The writ petitioner shall be re-instated

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forthwith. Further,I direct the respondents to pay arrears of salary and other service benefits treating him to be in continuous service and without any break. However, I pass no order as to costs.

Sd/-
Chief Justice

Jyotishi